BEFORE THE APPEALS BOARD FOR THE KANSAS DIVISION OF WORKERS COMPENSATION

ARTHUR D. THOUVENELL)
Claimant	
VS.)
) Docket No. 219,586
COMMERCIAL CONTRACTORS)
Respondent)
AND)
)
CIGNA WORKERS COMPENSATION)
Insurance Carrier)

ORDER

Claimant requested review of the preliminary hearing Order entered by Administrative Law Judge John D. Clark dated February 25, 1997.

Issues

The Administrative Law Judge denied claimant's request for benefits. The only issue before the Appeals Board is whether claimant sustained personal injury by accident arising out of and in the course of his employment with the respondent.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, for preliminary hearing purposes the Appeals Board finds as follows:

The preliminary hearing Order should be affirmed.

Claimant alleges he injured his back and neck when he fell from his water tank truck on two occasions on or about June 24, 1996. No one witnessed either incident and

claimant did not immediately report them. Claimant first sought medical treatment on June 27, 1996, but did not advise the doctor that he had been injured at work. There is a dispute whether claimant reported the alleged accident to his supervisor on that date. Claimant's supervisor, Herman F. Marten, testified and contradicted much of claimant's testimony.

Because of the circumstances surrounding these alleged incidents, claimant's credibility is crucial. The Administrative Law Judge had the opportunity to observe both claimant and his supervisor testify and assess their demeanor and credibility. In this instance, the Administrative Law Judge did not find claimant's testimony credible to such extent as to overcome the other evidence presented. The Appeals Board gives some deference to the Administrative Law Judge's conclusion and finds no reason to disturb the preliminary hearing finding. Based upon the evidence presented to date, the Appeals Board finds claimant has failed to prove he sustained a work-related accident in June 1996 as now alleged.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order dated February 25, 1997, entered by Administrative Law Judge John D. Clark should be, and hereby is, affirmed.

IT IS SO ORDERED.

Dated this	day of	May 1997
------------	--------	----------

BOARD MEMBER

c: Brian D. Pistotnik, Wichita, KS
Vincent A. Burnett, Wichita, KS
John D. Clark, Administrative Law Judge
Philip S. Harness, Director